

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL ANTHONY ABELS,

Plaintiff,

v.

HAROLD CLARKE, *et al.*,

Defendants.

Case No. C07-5303 RBL/KLS

ORDER RE-NOTING MOTION TO
DISMISS

Presently pending before the court is the motion to dismiss Plaintiff's Second Amended Complaint of Defendants Harold Clarke, Kristine Skipworth and Norman Hill (Dkt. # 83). Plaintiff submits his declaration and the declaration of his mother in opposition to the motion to dismiss. (Dkts. # 84 and 85). Plaintiff also submits a report from the Indeterminate Sentence Review Board. (Dkt. # 84, p. 18).

While the Court may take judicial notice of "matters of public record" without converting a motion to dismiss into a motion for summary judgment, *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir.1986), if matters outside the pleading are presented to and not excluded by the Court, a motion to dismiss shall be treated as one for summary judgment and disposed of as provided in Rule 56. Fed.R.Civ.P. 12(b). Plaintiff submits his declaration and that of his mother in

1 support of his argument that his transfer to prison was in retaliation when he and his mother spoke
2 out about his unfair treatment. Defendants should be given a reasonable opportunity to present all
3 materials made pertinent to such a motion by Rule 56. *Id.*

4 Accordingly, it is **ORDERED**:

- 5 (1) Defendants' Motion to Dismiss (Dkt. # 83) is **RENOTED** for **June 6, 2008**;
6 (2) Defendants' Reply to Plaintiff's Response, if any, shall be due on **May 29, 2008** and
7 Plaintiff's Surreply to Defendants' Reply, if any, shall be due on **June 6, 2008**; and
8 (3) The Clerk of the Court is directed to send copies of this Order to counsel of record
9 and to Plaintiff.

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11 DATED this 2nd day of May, 2008.

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15 Karen L. Strombom
16 United States Magistrate Judge
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